

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE REGION TEN

IN THE MATTER OF:

Ross Adams Mine Site
Tongass National Forest
Alaska

Newmont USA Limited and
Dawn Mining Company

RESPONDENTS

Proceeding Under Sections 104, 122(a)
and 122(d)(3) of the Comprehensive
Environmental Response, Compensation
and Liability Act as amended (42 U.S.C.
§§ 9604, 9622(a) and 9622(d)(3)).

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR ENGINEERING EVALUATION/COST ANALYSIS

I. INTRODUCTION AND STATEMENT OF OBJECTIVES

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into by the United States Department of Agriculture, Forest Service ("Forest Service"), and Newmont USA Limited. ("Newmont USA"), and Dawn Mining Co. ("Dawn"), (hereafter "Respondents"), for performance by Respondents of a non-time-critical removal action which shall consist of an Engineering Evaluation/Cost Analysis ("EE/CA"), pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607, and 9622, and 40 C.F.R. § 300.415 of the National Oil and Hazardous Substance Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"), at the Ross Adams Mine Site (the "Site") as further defined in this Settlement Agreement. The Site is located on lands under the jurisdiction, custody and control of the Forest Service within the established boundaries of the Tongass National Forest located in the State of Alaska. The Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, or designee, has concurred with this agreement, in accordance with the requirements of Section 4 of Executive Order 12580.
2. The objectives of this Settlement Agreement are: 1) for Respondents to conduct an EE/CA for the Site under the supervision of the Forest Service and in accordance with the NCP, 40 C.F.R. § 300.415; and 2) to reimburse the United States Department of Agriculture for Future Response Costs incurred in connection with oversight of the Work, as defined in Section XVIII of this Settlement Agreement.

II. JURISDICTION

3. This Settlement Agreement generally resolves the liability of the Respondents to the Forest Service for the payments that Respondents will make and the CERCLA response actions that the Respondents will perform on the Site, as described in detail below. This Settlement Agreement also contains specific provisions concerning reservations of rights, covenants not to sue, indemnification, and contribution.
4. This Settlement Agreement is entered into under the authority vested in the President of the United States by Sections 104, 107, 122(a), 122(d)(3), and 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9604, 9607, 9622(a), 9622(d)(3), and 9622(h)(1). The authority was delegated to the Secretary of the Department of Agriculture (the "Secretary") by Executive Order 12580, 52 Fed. Reg. 2926 (January 23, 1987), 3 C.F.R., 1987 Compilation, p. 193. The Secretary's authority was further delegated to the Chief of the Forest Service (the "Chief") by 7 C.F.R. § 2.60(a)(39). The Chief's authority was re-delegated to Regional Foresters, pursuant to the Forest Service Manual 2164.04c, 2.1, effective November 10, 1994.

5. By signing this Settlement Agreement, Respondents consent to the Forest Service's jurisdiction to issue this Settlement Agreement and agree to comply with and be bound by the terms and conditions of this Settlement Agreement. In any action by the United States to enforce the terms of this Settlement Agreement Respondents agree not to contest the authority and jurisdiction of the Forest Service to issue and enforce this Settlement Agreement. Respondents further agree not to contest the validity of this Settlement Agreement or its terms.
6. The Forest Service and Respondents recognize that this Settlement Agreement has been negotiated in good faith, and the implementation of the Work required is fair, reasonable and in the public interest. The actions undertaken by Respondents pursuant to this Settlement Agreement do not constitute any admission of any liability. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement by the Forest Service, the validity of the Findings of Fact and Conclusions of Law in this Settlement Agreement. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree that they will not contest the basis or validity of this Settlement Agreement or its terms. Respondents do not admit any liability to any Third Party arising out of this Settlement Agreement.

III. PARTIES BOUND

7. This Settlement Agreement shall apply to, and be binding upon, the Forest Service and Respondents and their agents, successors, and assigns. The signatories to the Settlement Agreement certify that they are authorized to execute and legally bind the parties that they represent to this Settlement Agreement.
8. Respondents are jointly and severally liable for carrying out all activities required by this Order. In the event of the insolvency or other failure of any one or more Respondents to implement the requirements of this Order, the remaining Respondents shall complete all such requirements.
9. Respondents shall provide a copy of this Settlement Agreement to each contractor, subcontractor, laboratory and consultant retained to perform the Work required by this Settlement Agreement and shall condition their contracts on compliance with the terms of the Settlement Agreement. Notwithstanding the provisions of any such contract, however, Respondents are, and shall remain, responsible for compliance with this Settlement Agreement.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed

below are used in this Settlement Agreement or in the attached appendices, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq.
- b. "Day" shall mean any calendar day. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- c. "Forest Service" shall mean the United States Department of Agriculture Forest Service and any successor departments or agencies of the United States.
- d. "Future Response Costs" shall mean all costs recoverable under CERCLA that the United States Department of Agriculture will incur, with regard to overseeing the Work performed under this Settlement Agreement, on or after the effective date of this Settlement Agreement until this Settlement Agreement is terminated.
- e. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.
- g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.
- h. "Past Response Costs" shall mean all costs, including direct and indirect costs, that the United States Department of Agriculture has incurred in connection with the Site prior to the effective date of this Settlement Agreement.
- i. "RCRA" shall mean the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as further amended, 42 U.S.C. §§ 6901, et seq.
- j. "Removal Action" shall mean those activities to be undertaken by Respondents to implement the Statement of Work.
- k. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.
- l. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all attached appendices. In the event of conflict be-

tween this Settlement Agreement and any appendix, this Settlement Agreement shall control.

- m. "Site" shall mean the Ross Adams Mine Site located on the Tongass National Forest near the southern end of Prince of Wales Island. The Ross Adams Mine is located about 38 miles southwest of Ketchikan, Alaska, in Prince Wales Ketchikan County, Alaska. The legal description of the Site is Sections 22, 26, and 27, Township 80 South, Range 88 East of the Copper River Meridian. The "Site" shall include anywhere that hazardous substances released from historic mining at the Ross Adams Mine has come to be located. The entire Site is on lands under the jurisdiction, custody, and control of the Forest Service. A map showing the general location of the Site is attached as Appendix A.
- n. "State" shall mean the State of Alaska.
- o. "Statement of Work" or "SOW" shall mean the Statement of Work that is attached to this Settlement Agreement as Appendix B.
- p. "Third Parties" shall mean any person as defined in CERCLA § 101(21) that is not a party to this Settlement Agreement.
- q. "USDA" shall mean the United States Department of Agriculture.
- r. "Work" shall mean all activities that Respondents are required to perform under this Settlement Agreement.

V. FINDINGS OF FACT

- 11. The following findings of fact and conclusions of law are set forth solely for the purpose of establishing jurisdiction for this Settlement Agreement. Respondents do not admit any finding of fact or conclusion of law stated herein. Without limiting the other provisions in this Paragraph 11, Respondents specifically deny the findings of fact and conclusions of law set forth in Paragraphs 12(e), 12(f), 13, 16, 17(c), 17(e), 17(f) and 17(i)." Moreover, the parties expressly reserve their rights to contest the admissibility of any finding of fact or conclusion of law stated herein for any purpose other than establishing the Forest Service's jurisdiction in this matter.
- 12. The Forest Service has compiled the following brief summary of the mining history of the Site:
 - a. In May, 1955, Don Ross discovered the uranium deposit onsite, and shortly thereafter he and Kelly Adams staked the original 13 claims located onsite.

- b. Climax Molybdenum Co. began exploratory drilling onsite on Aug. 30, 1955, and it performed a limited amount of exploration over the next two months. On October 10, 1955, Climax Molybdenum Co. incorporated the Kendrick Bay Mining Company ("KBMC"), and that company took over development of the Site.
 - c. From July through October, 1957, KBMC produced at least 15,000 tons of ore from the Ross Adams Mine and grossed slightly over \$2 million. In 1959, the Jott Mining Company leased the claims from KBMC and produced about 1,100 tons of ore in 1960. In 1961, Bay West, Incorporated ("Bay West") leased the claims from KBMC, and produced 2,600 tons of ore.
 - d. In January, 1963, Standard Metals Corporation ("Standard") was authorized by its board of directors to enter into a joint venture with Bay West wherein Standard purchased the right, title and interest of Bay West in the KBMC claims. Standard operated the Site on its own for several years. In 1963, Standard mined at least 11,667 tons of ore onsite and shipped 9,856 tons of that ore to a mill in Mexican Hat, Utah. On March 4, 1964, Standard agreed to acquire 75% of KBMC's stock. Shortly thereafter, the Federal Government announced cutbacks in uranium procurement, but that did not affect the sale of the ore under existing contracts. By September, 1964, Standard had fulfilled its AEC allocation, but Standard continued its exploration and assessment work onsite.
 - e. In 1968, KBMC entered into a joint venture with Newmont Exploration Limited ("NEL") to explore the Site. In 1970, NEL exercised an option to lease the property. NEL then subleased the Site to Dawn.
 - f. NEL and Dawn began extracting ore about the end of June, 1971. The ore was shipped to Dawn's mill in Ford, Washington from July, 1971 through September, 1971. NEL and Dawn mined at least 55,000 tons from the Site during 1971, and then shut down their operations onsite. There has been no further mining onsite since 1971.
- 13. Mine waste was left onsite as a result of the exploration and mining activities in the area. The mine waste contains hazardous substances such as radium and uranium. Erosion of this mine waste may have transported sediment into the creeks and drainages onsite and potentially impacted both surface water and coastal waters. There is at least one draining adit that is releasing hazardous substances into surface waters onsite.
 - 14. Pursuant to CERCLA and Executive Order 12580, the Forest Service is the lead agency for response actions at the Site. The Forest Service has incurred, and continues to incur, response costs associated with the Site.
 - 15. Newmont USA is the corporate successor to NEL.

16. There is a release, or a substantial threat of a release, of hazardous substances at the Site to the environment.

VI. CONCLUSIONS OF LAW

17. Based on the Findings of Fact set forth above, and the Administrative Record, the need for a non-time-critical removal action exists at the Site, and the Forest Service makes the following Conclusions of Law:
- a. The Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
 - b. There are hazardous substances, as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), present at the Site including, but not limited to radium and uranium.
 - c. The conditions described in the Findings of Fact above constitute an actual or threatened "release," of a hazardous substance from the facility, as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).
 - d. Respondents are "persons," as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
 - e. Respondents are responsible parties under Sections 104, 107 and 122 of CERCLA. Respondent Newmont USA is the successor to a person who at the time of disposal of any hazardous substance owned and operated the Site. Respondent Dawn Mining Co. is a person who at the time of disposal of any hazardous substance operated the Site.
 - f. The conditions present at the Site constitute a threat to the public health, welfare or the environment, and the response actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment, based upon the criteria for a removal action as stated in the National Contingency Plan ("NCP"), 40 C.F.R. § 300.415(b).
 - g. The Work required by this Settlement Agreement is in the public interest, is consistent with CERCLA and the NCP, 42 U.S.C. §§ 9604(a)(1) and 9622(a), and will expedite effective response action and minimize litigation, 42 U.S.C. § 9622(a).
 - h. Based on information currently available, the Forest Service has determined, for purposes of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), that Respondents are qualified to properly and promptly perform the Work required by this Settlement Agreement.

- i. The response actions performed by the Forest Service to date have been conducted in a manner not inconsistent with the NCP, 40 C.F.R. Part 300.

VII. ON-SCENE COORDINATOR/PROJECT COORDINATOR

18. The Forest Service has designated an On-Scene Coordinator ("OSC"), and Respondents have designated a Project Coordinator for the Site. The OSC and the Project Coordinator shall be responsible for overseeing implementation of the Work and/or activities required under this Settlement Agreement for his/her agency or organization. Except for Monthly Reports, which may be transmitted electronically, all required communications between the parties concerning implementation of this Settlement Agreement shall be in writing and directed to the OSC or Project Coordinator, by regular or overnight mail or by facsimile, with copies to such other persons as the Forest Service and Respondents, respectively, may reasonably designate. The parties may change their respective OSCs/Project Coordinators and shall notify each other in writing at least five (5) days prior to any such change. Respondents shall retain one or more contractors to perform the Work required under this Settlement Agreement and shall notify the Forest Service of the name(s) and qualifications of such contractor(s) within 30 days of the effective date of this Settlement Agreement. Respondents shall also notify the Forest Service of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 5 days prior to their commencement of such Work. The Forest Service retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondents. If the Forest Service disapproves of a selected contractor, Respondents shall retain a different contractor and shall notify the Forest Service of that contractor's name and qualifications within 15 days of the Forest Service's disapproval.
19. Deliverables and other written communications submitted under this Settlement Agreement shall be sent to the following persons:

For the Forest Service:

Michael Wilcox
OSC
Forest Service Region Ten
Federal Office Building
(street address) 709 West 9th Street, Juneau, AK 99801
(mail address) P.O. Box 21628, Juneau, AK 99802
Phone: (907) 586-9379
Fax: (907) 586-7555

Michael R. Hope
Attorney
USDA Office of the General Counsel
740 Simms St., Room 309
Golden, CO 80401
Phone: (303) 275-5545
Fax: (303) 275-5557

For Respondents:

Scott Miller (Project Coordinator)
Newmont USA Limited
6363 South Fiddler's Green Circle
Englewood, CO 80111
Phone: (303) 837-5469
Fax: (303) 837-6130

With a copy to:

Jacqui Beckett
Newmont USA Limited
6363 South Fiddler's Green Circle
Englewood, CO 80111
Phone: (303) 837-5076
Fax: (303) 837-5810

20. The Forest Service's OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement or to take any necessary response action to abate conditions at the Site that may present an imminent and substantial endangerment to the public health, welfare or the environment. The absence of the Forest Service's OSC from the Site shall not be cause for stoppage or delay of the Work required pursuant to this Settlement Agreement.

VIII. WORK TO BE PERFORMED

21. Respondents shall prepare, perform and submit to the Forest Service for review and approval an EE/CA in accordance with this Section and the SOW attached hereto as Appendix B.
22. All Work performed in connection with this Settlement Agreement shall be conducted under the direction and supervision of qualified personnel with experience in CERCLA response actions. All samples analyzed as part of the Work shall be analyzed by a labora-

tory that participates in a quality assurance/quality control program equivalent to that specified in the documents entitled "EPA Contract Laboratory Program Statement of Work for Organic Analysis" (May 2005) and "EPA Contract Laboratory Program Statement of Work for Inorganic Analysis" (March 2004).

23. All Work performed pursuant to this Settlement Agreement shall be conducted in accordance with CERCLA, the NCP, and applicable agency guidance documents.
24. Upon the OSC's request, Respondents shall provide the Forest Service with validated and non-validated data analysis within 30 days after Respondents receive such analysis. Respondents shall also notify the Forest Service in writing of the completion of significant field activities in the Monthly Reports.
25. The documents required to be submitted for approval pursuant to this Settlement Agreement shall be known as "deliverables." During performance of the Work required under this Settlement Agreement, Respondents shall provide the Forest Service with deliverables as described in the SOW.
26. For the purposes of this Settlement Agreement, the deliverables include a Sampling and Analysis Plan, an EE/CA, and Monthly Progress Reports. Additional deliverables are described more fully in the SOW:
 - a. Sampling and Analysis Plan. Respondents shall submit a Sampling and Analysis Plan ("SAP") that includes a conceptual site model, procedures for collecting and analyzing samples collected at the Site and additional information set forth in the SOW.
 - b. EE/CA. Respondents shall submit a complete EE/CA. The EE/CA will summarize the nature and extent of contamination onsite and the range of cleanup alternatives that could be used to address the contamination onsite. The EE/CA will incorporate the Work elements specified in NCP section 300.415 and the SOW. The EE/CA deliverables will include a draft of the EE/CA for Forest Service review in accordance with the schedule set forth in the SOW, the preparation of a draft EE/CA for public comment, and preparation of a final EE/CA incorporating the changes to the EE/CA directed by the OSC in response to public comments.
 - c. Monthly Progress Reports. Respondents shall prepare monthly progress reports and submit them to the OSC by the tenth day of each month that this Settlement Agreement is in effect, unless the OSC notifies the Respondents that a report is not required. The monthly progress reports may be submitted electronically or via regular mail by the Respondents. The report shall contain the following information:

1. Actions taken to comply with the Settlement Agreement, including plans and action taken in the preceding month.
 2. Actions taken during the preceding month that deviated from those planned or described in previous months.
 3. All significant problems encountered and any anticipated problems, any actual or anticipated delays, and all solutions planned or implemented to address problems or delays.
 4. Work planned for the next month in the schedule for all Work.
27. Respondents shall submit the deliverables required by this Settlement Agreement in accordance with the schedule set forth in the SOW.
28. With the exception of the Monthly Progress Reports, all deliverables shall be submitted initially by Respondents in draft, in accordance with the schedule provided in the SOW, and are subject to review, comment, and written approval by the Forest Service. The Forest Service may approve, disapprove, require revisions to, or modify each draft deliverable in whole or in part. Unless the Forest Service agrees that a longer time is reasonably necessary to address the comments, within 20 working days of Respondents' receipt of Forest Service comments on each draft deliverable (and 30 working days of Respondents' receipt on any draft EE/CA), Respondents shall amend and submit a revised deliverable to the Forest Service that responds substantively to all Forest Service comments and corrects all deficiencies identified by the Forest Service. Deliverables approved by the Forest Service may be modified only upon the written approval of the Forest Service. If Respondents revise a deliverable upon receipt of Forest Service comments, and the Forest Service disapproves of the revised deliverable, or the revised deliverable does not fully reflect the Forest Service's directions for change, or if a Monthly Progress Report does not include complete and accurate information required under this Settlement Agreement, the Forest Service retains the right to seek either stipulated penalties pursuant to this Settlement Agreement or statutory penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609 as provided in Paragraph 66, to complete the Work itself (or any portion of the Work), and seek reimbursement from Respondents for its costs, and/or to seek any other appropriate relief, subject to Respondents' right to invoke the provisions of Section XVI of this Settlement Agreement.
29. Neither a failure of the Forest Service to expressly approve or disapprove of Respondents' submission of any deliverable or other written document pursuant to this Settlement Agreement within a specified time period, nor the absence of written comments by the Forest Service in response to such submissions, shall be construed as approval by the Forest Service. Submission of any deliverable or other written document by Respondents pursuant to this Settlement Agreement shall not be construed as approval of the deliverable or document under the Settlement Agreement.

30. Respondents shall not implement the actions described in a deliverable until they receive written approval of the deliverable from the Forest Service. Each deliverable approved in writing by the Forest Service shall be incorporated by reference into this Settlement Agreement. All Work performed pursuant to this Settlement Agreement shall be in accordance with approved deliverables. Failure to comply with any provision of an approved deliverable shall be considered a violation of this Settlement Agreement.
31. The Forest Service reserves the right to stop work from proceeding further, either temporarily or permanently, on any task, activity or deliverable at any point during performance of the Work required under this Settlement Agreement if Respondents fail to comply with the terms of this Settlement Agreement.
32. If the Forest Service performs any of the Work required under this Settlement Agreement, Respondents shall incorporate or integrate the results of such Work into any report or deliverable to which the Work is relevant.
33. The Forest Service will prepare a Community Relations Plan in accordance with applicable EPA guidance(s) and the NCP. To the extent requested by the Forest Service, Respondents shall provide information and otherwise cooperate with the Forest Service in support of the Community Relations Plan.

IX. EMERGENCY RESPONSE AND NOTIFICATION

34. In the event of conditions at the Site posing an immediate threat to human health, welfare or the environment, Respondents shall immediately notify the OSC by telephone within 24 hours of discovery of the threat. In the event that the Forest Service determines that the immediate threat warrants changes to the Work Plan, the Forest Service shall modify or amend the Work Plan in writing accordingly. Any such modification to the Work Plan shall be consistent with Respondents' existing personnel and equipment already onsite for the performance of the Work. Respondents shall implement the Work Plan as modified or amended. Any determination by the Forest Service that an immediate response at the Site is required shall not be subject to the dispute resolution provisions of this Settlement Agreement.
35. Nothing in the preceding paragraph shall be deemed to limit any authority of any agency of the United States, including the Forest Service, to take, direct, or order all appropriate action to protect human health, welfare or the environment.

X. ADDITIONAL INVESTIGATION AND ANALYSIS

36. If the Forest Service determines that additional work is required to meet the objectives of this Settlement Agreement, it may notify Respondents in writing of its determination and specify any changes to the Work Plan or any other deliverable required to implement the

additional work. Any additional Work shall be limited to additional sampling on the Site and analysis of such data consistent with the requirements for preparation of an EE/CA, and shall not include any further response actions. Within ten (10) working days of receipt of the Forest Service's determination that additional work is required, Respondents shall advise the Forest Service in writing whether they will perform the additional work. In the event that Respondents do not agree to perform the additional work, the Forest Service may complete the work itself and seek reimbursement from the Respondents for its costs, and/or seek any other appropriate relief, subject to the provisions of Section XVI of this Settlement Agreement. If Respondents agree to perform the additional work, within thirty (30) calendar days of their notice of agreement to the Forest Service, they shall submit to the Forest Service a revised Work Plan or other appropriate deliverable describing and providing a schedule for performance of the additional work. If both parties agree in writing to the revisions to the Work Plan and/or the new deliverable, the revised Work Plan and/or the new deliverable shall become an attachment to this Settlement Agreement and incorporated herein. Respondents shall perform all agreed upon additional tasks, including providing any additional analytical results and reports as requested by the Forest Service in accordance with the standards, specifications, and schedules determined or approved by the Forest Service.

XI. ADMINISTRATIVE RECORD AND PUBLIC COMMENT

37. In accordance with 40 C.F.R. §§ 300.800-825, the Forest Service will determine the contents and location of the administrative record for the Site.
38. Respondents shall submit to the Forest Service, at the time of the submission of the Final EE/CA, any non-privileged documents developed during the course of the Work. Documents developed during performance of the Work that Respondents shall submit to the Forest Service include, but are not limited to, copies of plans, task memoranda, documentation of field modifications, recommendations for further action, quality assurance memoranda and audits, raw data, field notes, laboratory analytical reports and other reports required pursuant to this Settlement Agreement. Respondents shall also submit any correspondence between Respondents and state, local, or other federal authorities concerning the performance of the Work.
39. The Forest Service retains the responsibility for releasing to the public the EE/CA and any decision documents for the Site.

XII. ACCESS

40. Pursuant to the terms and conditions of this Settlement Agreement, Respondents and their authorized representatives are authorized by the Forest Service to have access to those parts of the Site that are under the custody, control and jurisdiction of the Forest Service solely for the purpose of implementing the terms of this Settlement Agreement. If, to perform the Work required by this Settlement Agreement, access is needed to any area or

land not under the custody, control and jurisdiction of the Forest Service, Respondents shall use best efforts to secure access for themselves and their authorized representatives, as well as for the Forest Service. Respondents shall immediately notify the Forest Service if after using their best efforts, they are unable to obtain such access agreements. Best efforts shall include expending reasonable amounts of money for Site access. Respondents shall describe in writing their efforts to obtain access. The Forest Service may then assist Respondents in gaining access, to the extent necessary to effectuate the objectives of this Settlement Agreement, using such means as the Forest Service deems necessary. Respondents shall reimburse the Forest Service for all costs and attorney's fees incurred by the United States in obtaining such access.

XIII. SAMPLING AND DATA AVAILABILITY

41. Respondents shall notify the Forest Service orally at least seven (7) days prior to conducting field events, including sampling events. At the request of the Forest Service, Respondents shall allow split or duplicate samples to be taken of any samples they collect in the course of implementing this Settlement Agreement.
42. Except as to Third Parties, Respondents waive objections to the validity and admissibility of data generated in the course of performance of Work under this Settlement Agreement if such data has been validated in accordance with the QA/QC procedures set forth in the SAP.
43. Except as to Third Parties, Respondents agree not to assert any business confidentiality claim, or attorney client or attorney work product privilege, with respect to any data relating to conditions at or resulting from releases at the Site generated in the course of the performance of the Work pursuant to this Settlement Agreement. Respondents may assert a claim of business confidentiality covering any other type of information generated pursuant to the requirements of this Settlement Agreement, provided such claim is consistent with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Any such claim shall be asserted in the manner described in 7 C.F.R. § 1.12 and substantiated at the time the claim is made. Information determined to be confidential by the Forest Service will be given the protection specified in 7 C.F.R. § 1.12. If no such claim accompanies the information when it is submitted to the Forest Service, or if the Forest Service has notified Respondents that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 7 C.F.R. § 1.12, it may be made available to the public by the Forest Service without further notice to Respondents.
44. In the event Respondents decide to withhold any document or information otherwise required to be disclosed by the provisions of this Settlement Agreement on the basis of a claim of privilege, they shall inform the Forest Service of that decision and provide the Forest Service with the date, author, recipient(s), title, and description of the document or information withheld. Respondents shall also identify which privilege they assert applies to the document or information withheld and explain the basis for their assertion. The

Forest Service may at any time challenge Respondents' claims of privilege in a court of competent jurisdiction.

XIV. OTHER APPLICABLE LAWS

45. All actions required to be taken pursuant to this Settlement Agreement shall be performed in accordance with the requirements of all applicable local, state and federal laws and regulations, as determined by the Forest Service.
46. Compliance by Respondents with the terms of this Settlement Agreement shall not relieve Respondents of their obligation to comply with CERCLA, the Resource Conservation and Recovery Act, (RCRA), 42 U.S.C. § 6921, *et seq.*, or any other applicable local, state or federal laws and regulations.
47. No local, state, or Federal permit shall be required for any portion of any action conducted entirely on-site, including investigations and testing, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. §9621. As used in this Settlement Agreement, the term "on-site" shall have the meaning set forth in 40 C.F.R. Part 300.5 and shall include anywhere that sampling is required under the SOW. Where any portion of the Work is to be conducted off-site and requires a Federal or state permit or approval, Respondents shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

XV. RECORD PRESERVATION

48. The original or one copy of all records and documents, excluding internal drafts of deliverables, in the possession, custody or control of Respondents that are generated or collected pursuant to this Settlement Agreement shall be preserved for ten years following completion of the Work required by this Settlement Agreement. Such documents or information may be preserved in either a paper or an electronic form. If documents or information is preserved in electronic form, Respondents shall make it available in a format readable by the Forest Service, or Respondents shall provide, at Respondents' expense, a copy to the Forest Service of the program needed to read the document or information. At the end of this ten year period and 30 days before any document or information is destroyed, Respondents shall notify the Forest Service in writing that such documents or information may be destroyed and, upon request, shall provide the originals or copies of such documents and information to the Forest Service.

XVI. DISPUTE RESOLUTION

49. The dispute resolution procedures in this Section are the exclusive mechanism for resolving disputes arising under this Settlement Agreement. A dispute shall be consid-

ered to have arisen when Respondents send the Forest Service a written Notice of Dispute. A Notice of Dispute must be submitted by Respondents within twenty (20) Working Days of receipt of any written final disapproval by the Forest Service of a deliverable required by this Settlement Agreement or any other written notification by the Forest Service of noncompliance with any requirement of this Settlement Agreement. The failure to submit a timely Notice of Dispute shall be deemed a waiver of Respondents' right to invoke dispute resolution under this Section.

50. In the first instance, the parties shall attempt to resolve any dispute arising under this Settlement Agreement by informal negotiations. The period for informal negotiations shall not exceed twenty (20) Working Days from the date of receipt of the Notice of Dispute, unless the parties agree in writing to modify the period for informal negotiations. If the parties fail to resolve the dispute informally, the formal dispute resolution procedure in the following paragraphs shall apply.
51. In the event the parties cannot resolve the dispute through informal negotiations, then the Forest Service's position shall be binding unless, within fifteen (15) Working Days after the conclusion of the informal negotiations period, Respondents invoke the formal dispute resolution procedures of this Section by serving on the Forest Service a written Statement of Position on the matter in dispute. Respondents' written Statement of Position shall be sent by facsimile, electronic mail, overnight mail or some equivalent service, and shall define the dispute and state the basis of Respondents' objections to the Forest Service's position.
52. Following receipt of Respondents' Statement of Position, the Forest Service shall promptly provide the Regional Forester, Forest Service Region Ten, with a copy of Respondents' Statement of Position and a written response to Respondents' Statement of Position. A copy of the Forest Service's response shall be simultaneously sent to Respondents by facsimile and/or overnight mail or some equivalent service.
53. Following receipt of Respondents' Statement of Position and the Forest Service's response, the Regional Forester or his/her designee, shall make a final determination resolving the matter in dispute. The Regional Forester shall determine what, if any stipulated penalties shall apply to Respondents for the matter in dispute, as part of the final determination. No Forest Service decision made pursuant to this Section shall constitute a final agency action giving rise to judicial review. In the event the Forest Service files any action against Respondents to enforce this Settlement Agreement, the terms of this Section XVI shall not constitute a waiver of any defenses to such action.
54. Respondents shall proceed in accordance with the final determination regarding the matter in dispute. If Respondents do not perform any required Work in accordance with the final determination, the Forest Service may perform any portion of the Work itself and/or pursue any other appropriate relief, including judicial enforcement of this Settlement Agreement pursuant to Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3).

stipulated penalties pursuant to this Settlement Agreement, statutory penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, or cost recovery pursuant to Section XVIII of this Settlement Agreement or other applicable law.

55. The invocation of the dispute resolution provisions of this Settlement Agreement shall not extend, postpone or affect in any way any obligation of Respondents under this Settlement Agreement not directly in dispute, unless the Forest Service agrees in writing otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue during dispute resolution, except during periods when a response or other action by the Forest Service is pending, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of the Settlement Agreement. In the event Respondents do not prevail on the disputed matter, stipulated penalties shall be assessed and paid as provided in Section XIX.

XVII. FORCE MAJEURE

56. Delays or inability to perform any of the requirements of the Settlement Agreement within the time limits prescribed shall not be a violation of the Settlement Agreement where performance is prevented or delayed by a force majeure event. Force majeure is defined as any event arising from causes beyond the control of Respondents, or of any entity controlled by Respondents, including Respondents' contractors, that delays or prevents performance of any obligation under this Settlement Agreement despite Respondents' best efforts to fulfill the obligation. Force majeure does not include the financial inability of Respondents to complete performance of the obligation or increased cost of performance. Respondents shall have the burden of proving force majeure by a preponderance of the evidence.
57. If any event occurs that may materially delay performance of any obligation under this Settlement Agreement or submittal of any deliverable past the applicable deadline, Respondents shall notify the OSC verbally within seventy-two (72) hours of the time Respondents knew, or reasonably should have known, that the event would delay such performance or submittal. Within five (5) business days thereafter, Respondents shall notify the Forest Service in writing of the reasons for the delay, its anticipated length, measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of these measures. Failure to comply with these requirements shall waive any claim of force majeure by Respondents.
58. The OSC shall notify Respondents in writing of the Forest Service's determination as to whether force majeure applies to the event or circumstances whenever practicable within seven (7) days after receipt of written notice from Respondents. If the Forest Service determines that the delay has been or will be caused by circumstances constituting a force majeure, the due date for each uncompleted task in this Settlement Agreement shall be extended for a sufficient period to complete the tasks that were delayed or prevented.

Such period shall be at least equal to the delay resulting from the force majeure circumstance. If the Forest Service does not sustain Respondents' force majeure claim, or if there is no agreement on the length of an extension of time, the dispute shall be resolved in accordance with the dispute resolution provisions in Section XVI of this Settlement Agreement.

XVIII. REIMBURSEMENT OF COSTS

59. Respondents shall reimburse the Forest Service for all Future Response Costs incurred by the Forest Service and the Department of Agriculture in connection with this Settlement Agreement.
60. Prior to the termination of this Settlement Agreement, the Forest Service will submit to Respondents one or more bills, including a cost summary, for the Future Response Costs incurred by the Forest Service in connection with overseeing the implementation of the terms of this Settlement Agreement. Within thirty (30) days of receipt of each bill, Respondents shall remit a cashier's or certified check, referencing the Ross Adams Mine Site, for the full amount of the bill to:

ASC - DEBT MANAGEMENT
USDA Forest Service Albuquerque Service Center
101 B Sun Avenue, NE
Albuquerque, NM 87109

Prior to the termination of this Settlement Agreement, USDA will submit to Respondents one or more bills, including a cost summary, for the Future Response Costs incurred by the USDA in connection with overseeing the implementation of the terms of this Settlement Agreement. Within thirty (30) days of receipt of each bill, Respondents shall remit a cashier's or certified check, referencing the Ross Adams Mine Site, for the full amount of the bill to:

Office of the General Counsel
USDA
1400 Independence Ave., SW
Room 2038
Washington, DC 20250
Attn: Shirley Pate

This payment should be identified as payment for "costs incurred by the Office of the General Counsel for the Ross Adams Mine Site." Both of Respondents' checks should include Respondents' tax identification numbers.

61. In the event that full reimbursement of the United States' Future Response Costs is not paid by Respondents within thirty (30) days of Respondents' receipt of each bill, as pro-

vided in the preceding paragraph, Respondents shall be liable to pay stipulated penalties, as provided in this Settlement Agreement, and interest on the unpaid balance at the rate provided in Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4). Interest shall begin to accrue on the thirty first (31st) day after Respondents' receipt of the bill and shall continue to accrue until the date that full payment of the bill is received by the Forest Service or USDA.

62. In accordance with the provisions of Section XVI of this Settlement Agreement, Respondents may dispute all or part of a bill for reimbursement of response costs submitted pursuant to this Settlement Agreement only on the basis of accounting errors or inclusion of costs outside the scope of this Settlement Agreement or inconsistency with the NCP. Any such objection shall be made in writing within thirty (30) days of receipt of the demand for payment and shall specifically identify the disputed costs and the basis of the dispute.

XIX. STIPULATED PENALTIES

63. Unless there has been a written modification of a compliance date by the Forest Service or force majeure event as defined herein, in the event Respondent fails to timely perform any of the Work set forth in the SOW or this Settlement Agreement, Respondents shall pay stipulated penalties in the amount of \$100 per day, per violation for the first week of violation; \$250 per day, per violation for the 8th through 14th day of noncompliance; and \$500 per day, per violation for the 15th day of noncompliance and every day thereafter. Compliance by Respondents shall include complete and timely performance of each activity required under this Settlement Agreement or complete and timely performance of all Work described in any plan, statement or deliverable approved under this Settlement Agreement.
64. All penalties shall begin to accrue one working day after the Forest Service notifies Respondents that complete performance is due or a violation occurs and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.
65. The Forest Service will advise Respondents in writing of any stipulated penalties owed by Respondents pursuant to this Section. All penalties shall be paid by certified or cashier's check within thirty (30) days of the date of receipt of the demand for payment from the Forest Service. Interest shall begin to accrue on the unpaid balance from the date of the receipt of the Forest Service's demand for payment.
66. The stipulated penalties set forth in this Section do not preclude the Forest Service from pursuing any other remedies or sanctions that may be available to the Forest Service by reason of Respondents' failure to comply with any of the requirements of this Settlement Agreement, or applicable law, nor shall payment of stipulated penalties relieve Respon-

dents of the responsibility to comply with any requirement of this Settlement Agreement or applicable law. The Forest Service shall not seek civil penalties for any violation for which the Forest Service has already sought and received stipulated penalties under this Settlement Agreement.

XX. RESERVATION OF RIGHTS

67. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent the United States from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.
68. The covenant not to sue set forth in Section XXI does not pertain to any matters other than those expressly identified therein. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:
- a. claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
 - b. liability for Past Response Costs or other costs not included within the definition of Future Response Costs;
 - c. liability for performance of response action other than the Work Respondents perform under this Settlement Agreement;
 - d. criminal liability;
 - e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; and
 - f. liability arising from the past, present, or future disposal, release or threat of release outside of the Site of: 1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).
69. The parties to this Settlement Agreement reserve any claims they now have, or may have in the future, against any Third Party including, but not limited to, claims under Sections

107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, for recovery of response costs, including oversight costs arising out of, or related to, this Settlement Agreement, and any future and/or past costs incurred in connection with the Site. Nothing in this Settlement Agreement shall constitute or be construed as a release from any claim, cause of action or demand against any person, firm, partnership, or corporation not a signatory to this Settlement Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, pollutants, or contaminants found at, taken to, or taken from the Site.

70. Except as otherwise provided in Paragraph 71, Respondents reserve any claims against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, related to the Site.

XXI. COVENANTS NOT TO SUE

71. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work required to be performed pursuant to this Settlement Agreement or Future Response Costs, including, but not limited to:
- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
 - b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Alaska State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
 - c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work required under this Settlement Agreement.

These covenants not to sue shall not apply in the event the United States brings a cause of action pursuant to the reservations set forth in Section XX, but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

72. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

73. In consideration of the actions that will be performed and Respondents' payment for Future Response Costs as provided in Section XVIII of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, the United States covenants not to sue or to take administrative action against Respondents pursuant to Section 107(a) of CERCLA, 42 U.S.C. §§ 9607(a), for the Work or for payment of Future Response Costs. This covenant not to sue is conditioned upon the complete and satisfactory performance by Respondents of their obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XVIII. This covenant not to sue extends only to Respondents, their successors and assigns, and their officers, directors, and employees, and does not extend to any other person.

XXII. INDEMNIFICATION

74. Respondents agree to indemnify and hold the United States and its agencies, departments, agents and employees harmless from all claims arising from acts or omissions of Respondents or those acting on their behalf, including their officers, employees, agents, contractors, subcontractors, or assigns, in carrying out activities under this Settlement Agreement. Respondents have an affirmative duty to protect from injury and damage the land, property, and other interests of the United States in connection with Respondents' activities onsite. Damage includes, but is not limited to, fire suppression costs and all costs and damages associated with restoration or rehabilitation of natural resources associated with Respondents' activities on the Site. Respondents shall be liable for damage to all roads and trails of the United States caused by Respondents, or those acting on their behalf, except that liability shall not include reasonable and ordinary wear and tear.

XXIII. CONTRIBUTION

75. The Parties agree that this settlement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have, as of the Effective Date, resolved their liability to the United States for the Work and Future Response Costs. Nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. §§ 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIV. OTHER CLAIMS

76. By entering into this Settlement Agreement, the Forest Service assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents. The Forest Service shall not be deemed to be a party to any contract entered into by Respondents or their contractors to carry out actions pursuant to this Settlement Agreement.

XXV. NOTICE OF COMPLETION

77. Upon completion of all requirements set forth in the SOW, Respondents shall certify in writing to the Forest Service that all requirements under this Settlement Agreement, including any additional work and payment of stipulated penalties, have been completed. The certification shall be signed by a representative of Respondents with the requisite knowledge and authority, and shall include the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete." Respondents shall include with this notice, a good faith estimate of the costs incurred by Respondents in completing the EE/CA. If the Forest Service agrees with Respondents' certification, it will so notify Respondents in writing and this Settlement Agreement, with the exception of any continuing obligations, shall be terminated. For the purposes of this Section, continuing obligations shall include, but not be limited to, the following obligations contained in this Settlement Agreement: Section XV (Record Preservation), Section XX (Reservation of Rights), Section XXI (Covenants Not to Sue), Section XXII (Indemnification), and Section XXIV (Other Claims). If the Forest Service determines that any requirements of this Settlement Agreement have not been completed by Respondents, the Forest Service will notify Respondents in writing and specify the deficiencies. Respondents shall correct such deficiencies in accordance with the Forest Service's notice. Failure by Respondents to correct such deficiencies shall be a violation of this Settlement Agreement.

XXVI. EFFECTIVE DATE, MODIFICATION AND COMPUTATION OF DUE DATES

78. The effective date of this Settlement Agreement shall be the date it has been executed by all of the parties and written concurrence has been issued by the United States Department of Justice. This Settlement Agreement may be executed in counterparts.
79. The terms of this Settlement Agreement may be modified only by the written agreement of the parties.
80. References in this Settlement Agreement to specific agency guidance documents or other official agency documents shall include any subsequent revisions or updates to such documents.

81. No informal advice, guidance, suggestion or comment by the Forest Service regarding any document or deliverable submitted by Respondents relieve Respondents of their obligation to obtain the formal written approvals required by this Settlement Agreement or to comply with the requirements of this Settlement Agreement.
82. Unless specifically provided otherwise, calendar days shall be used to compute due dates in this Settlement Agreement. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next business day.

XXVII. PRESERVATION OF ANTIQUITIES


83. If, while implementing the terms of this Settlement Agreement, Respondents discover any objects of historic or scientific interest, they shall notify the OSC and leave such discoveries intact until and unless otherwise instructed by the OSC. To the extent that these requirements cause a delay in conducting the Work, and Respondents have not contributed to the delay, such an occurrence shall constitute a force majeure event. For the purposes of this Section, objects of historic or scientific interest include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts. Compliance with any protective and mitigative measures specified by the OSC to protect such objects from disturbance associated with conducting the Work shall be Respondents' responsibility.

UNITED STATES DEPARTMENT OF AGRICULTURE
FOREST SERVICE REGION TEN

By: Dennis E Bschor Date: 4/17/2009

Name: Dennis Bschor
Title: Regional Forester

NEWMONT USA LIMITED

By: _____

Date: 3/16/09

Name: Alan R. Blank

Title: Vice President

DAWN MINING COMPANY

By: _____

Date:

Name: John K. Mudge


Title: President

NEWMONT USA LIMITED

By: _____ Date: _____

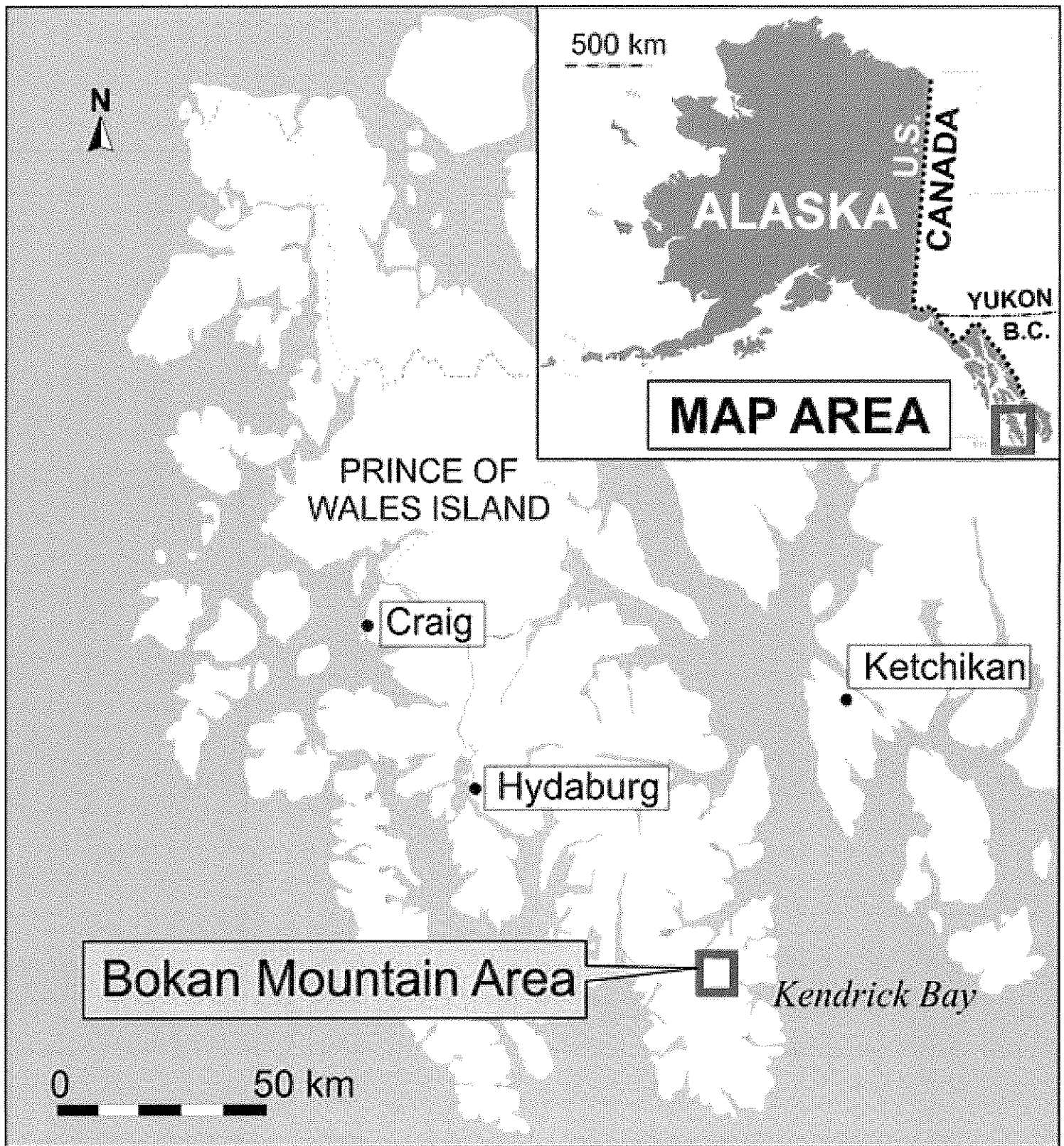
Name: Alan R. Blank
Title: Vice President

DAWN MINING COMPANY

By:  _____ Date: 3-16-09

Name: John K. Mudge
Title: President

APPENDIX A



APPENDIX B

Statement of Work Ross-Adams Uranium Mine Tongass National Forest; Prince of Wales Island, Alaska

March 5, 2009

I. OBJECTIVE

The purpose of this Statement of Work (SOW) is to describe the work to be performed at the Ross Adams Mine Site, Prince of Wales Island, Alaska. The Ross-Adams (Bokan Mountain) Uranium Mine Site or “Site” for the purposes of this SOW shall include the mine, haul roads, ore staging area, former barge loading area, and downstream potentially impacted areas including Kendrick Creek delta, and any contiguous areas necessary for the conduct of the investigation. The objectives shall include performing an expanded site investigation to address identified data gaps at the Site, conducting a human health and ecological risk assessment, and conducting an Engineering Evaluation/Cost Analysis (EE/CA) to develop and evaluate removal action alternatives to reduce the release or threat of release of hazardous substances from the Site.

II. BACKGROUND

The United States Department of Agriculture, Forest Service manages lands of the Tongass National Forest in southeast Alaska, including an area known as the Ross Adams Mine located approximately 38 miles southwest of Ketchikan on Prince of Wales Island. The mine is located on the southeast flank of Bokan Mountain in the Kendrick Creek watershed. A preliminary assessment/site inspection (PA/SI) was prepared in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) during May of 2004.

Kent & Sullivan, 2004. 2004 Preliminary Assessment/Site Inspection Report, Ross Adams Uranium Mine, Prince of Wales Island, Alaska. Prepared for the USDA Forest Service, Alaska Region.

Available information in the 2004 PA/SI includes a detailed summary of previous sampling results, potential migration pathways, and target receptors. The PA/SI identifies waste rock sources, volume/mass and potential proxy methods for future, more comprehensive nature/extent studies. Additional Site information is necessary to fill identified data gaps and proceed with development of removal action alternatives and their evaluation.

III. TASKS

A. PROJECT SCHEDULE

The deliverables required by this SOW shall be submitted to the Forest Service in accordance with the following schedule:

APPENDIX B

<u>Deliverable</u>	<u>Deadline</u>
Sampling and Analysis Plan	Within 60 days after the effective date of the Settlement Agreement
Site Safety and Health Plan	Within 60 days after the effective date of the Settlement Agreement
Quality Assurance Project Plan	Within 60 days after the effective date of the Settlement Agreement
Monthly Progress Reports	By the 10th day of each month that the Settlement Agreement is in effect
Site Characterization Report	Within 90 days after receiving complete analytical results from all sampling required under this SOW
EE/CA	Within 90 days after receiving Forest Service approval of the final Site Characterization Report

B. EXPANDED SITE INVESTIGATION

An Expanded Site Investigation (ESI) will be conducted to provide additional data necessary to perform an EE/CA and supporting risk assessment. A Sampling and Analysis Plan (SAP) shall be prepared and submitted to the Forest Service for review and approval. The SAP shall describe specific methods that will be used to address the identified data gaps for site characterization, baseline monitoring, background evaluation, ecological effects, subsistence and community use surveys. The SAP shall be conducted in accordance with all applicable federal and state regulations, including but not limited to CERCLA and the National Contingency Plan (NCP), and the applicable technical provisions in Alaska Administrative Code (AAC) Title 18, Chapter 75. The SAP shall delineate at minimum:

- Data Quality Objectives
- Environmental media to be sampled (e.g., surface water, soil, groundwater, stream sediments, marine sediments, ambient air, aquatic life, and other ecological receptors) from multiple source areas (e.g., such as waste rock dumps, ore storage area, haul roads, mine, waste rock, and ore in the marine environment);
- Planned sampling locations and depths delineated on site maps/figures;
- Data collection methods, sample frequency, and constituents to be analyzed in each media;
- Analytical methods and associated method detection limits;
- Conceptual Site Model;

APPENDIX B

- Human health and ecological risk assessment workplan; mirroring the technical intent of determining risk pursuant to the risk assessment framework for a remedial action investigation.

Several pathways require further information to determine if contaminants of concern are present, including ambient air across the Site, groundwater, and uptake to plants/animals from soil or sediment contamination. The expanded site investigation shall address the following data gaps through appropriate additional sampling and data collection. A summary of the proposed SAP is presented in Table 1 and the proposed location of media sampling is shown on Figure 1. Modified or final sample collection and sampling locations will be provided in the SAP and further refined by field reconnaissance conducted prior the first sampling event. Additional samples and analyses to those listed on Table 1 and shown on Figure 1 may be required as part of the SAP.

Surface Water

Additional background and other surface water samples are required to compare upstream/downstream segments of various drainages across the Site.

- Comparison of locations from within Kendrick Creek upstream of the 300-foot level. At least two surface water samples are required, if the creek is accessible upslope of the 300-foot level. One previous sample (WA05) was analyzed for gross alpha, beta, radium, and metals, but not uranium, thorium, or gamma radiation.
- Upper Mine Fork Creek adjacent to North Dump (near PPE-1) and upstream of the bridge crossing.
- 700-Level Creek both upstream and downgradient of the mine road crossing, prior to the confluence with Kendrick Creek, including near PPE-2.
- Ephemeral drainages from the 700-foot level adit into the 700-Level Creek.
- Surface water samples at the culverts draining the waste rock dump at the 300-ft level, prior to confluence with Kendrick Creek.
- Surface water sample below PPE-4 in Mine Fork Creek at 300-ft level dump site.
- Mine Fork Creek immediately upstream of the 300-foot level dump.
- Cabin Creek downstream of the haul road crossing, before the confluence with Kendrick Creek.
- Ore Staging Area unnamed creek, upstream of PPE-7.

Stream and Marine Sediment

Additional sediment samples are required in the following areas:

- Sediment samples upstream of 300-foot Level in Kendrick Creek.
- Extent of contamination in Mine Fork Creek downgradient of 900-foot Level.
- Extent of contamination in upper Mine Fork Creek adjacent to the North Dump.
- Additional characterization of sediment contamination in 700-Level Creek.
- Sediment samples in Cabin Creek downstream of haul road crossing.
- Determine the extent of marine sediment contamination in west arm of Kendrick Bay by collection of samples at the former loading dock area and along the bay shore on either side of the dock area including at the Kendrick Creek delta area.

APPENDIX B

Soil, Waste Rock & Ore Staging Area Sources

Background samples have been collected to characterize granite bedrock (Bokan Mtn bedrock, stock of ore body), quartz monzonite bedrock (underlies the haul road and 300-ft level), and shoreline area soils (forested areas with mineral soils over quartz monzonite). Additional sampling is required to characterize the nature and extent of waste rock, ore and soil contamination. This characterization shall be performed by gamma and XRF surveys coupled with correlation with analytical results from field sampling. Survey measurements will be conducted along transects that will cross mine materials and continue away from these materials until gamma and XRF measures are sufficient to establish local background conditions. Further sampling is required for the following areas:

- Delineation of gamma radiation levels for both local background and mine-related impacts.
- Delineation of the full extent of soil contamination around the ore staging area, 300-ft level dump, 700-ft level, and along the mine/haul roads.

The volume estimates presented in the 2004 PA/SI need to be refined to reduce uncertainties. The SAP shall include methods for assessing the lateral and vertical extent of the waste rock piles to refine the volume estimates. The thickness of mine waste rock comprising the haul road (or spilled along the road) shall be estimated to determine potential waste rock volumes. The estimated volume of ore and waste rock and/or sediment within the intertidal/subtidal and former dock area shall also be calculated.

Air

The study design shall consider average reasonable maximum exposure over time. Additional data/information required for complete evaluation of the air pathway includes:

- Air monitoring data with weather data to determine radon concentration, and flow rates, including at the adit portals.
- Local background measurements over quartz monzonite bedrock for radon in air.
- Local background measurements for radon in areas not impacted by waste rock or sources at locations proposed on Figure 1.
- Information on the potential for hazardous fugitive dusts or particulates in air associated with the haul road or dump sources.

Groundwater

Groundwater was not specifically evaluated in the 2004 PA/SI, but sources may potentially impact groundwater via leaching. The water discharging from the mine adits at the 300-ft and 700-ft levels likely impacts surface water in the immediate vicinity. The SAP shall determine the nature and extent of potential groundwater interaction with surface water. Additional data required includes:

- Evaluation of groundwater flows from lower elevations and its interaction with wetlands and marine sediment.
- Interstitial water sampling from the sediment collected from well points as proposed on Figure 1.

Engineering Assessment

An engineering assessment of the Site man-made and natural features will be conducted to document and assess the engineering aspects of the following:

APPENDIX B

- The adequacy of diversion structures to control runoff inflow to mine openings.
- Development of an inventory of man-made structures and other mine-related structures present on the Site that includes mapping, description of physical dimensions and locations, and an assessment of condition.
- The stability and competency of mine openings in terms of public safety and possible hazard mitigation work and/or sealing of the openings.
- Potential sources of on-Site borrow material for possible use in response action work, in terms of material type, amounts available and development practicality.
- Siting studies to evaluate potential engineering constraints on in-place encapsulation of waste piles and potential repository locations.
- Site constructability conditions and logistics that could effect implementation of response action work.

Consistent with the ESI environmental media sampling summarized above, the ESI will evaluate particular areas within the Site as follows.

Ore Staging Area / Former Loading Dock

Additional investigation is required in the vicinity of the ore staging area (OSA) including:

- Further characterize soils around existing dock.
- Assessment of the man-made dike diverting stream flow around the OSA, its condition and likelihood of failure.
- Characterize the intertidal/subtidal sediments downgradient of the OSA and dock bulkhead, laterally and vertically (subsurface sediments).
- Characterize groundwater seeps and waters downgradient of the sheet flow off of the OSA. Note that beach areas below and north of the Ore Storage Area were inspected for groundwater seeps during a low tide. Three seeps were identified north of the OSA and one was excavated to groundwater. Samples were not collected during the PA/SI because the waters were saline and did not yield sufficient volume for samples.
- Conduct Microtox® and/or *Daphnia* IQ rapid toxicity tests (e.g., bioassays) to evaluate sediment toxicity
- Depending on results of the screening level risk assessment, inventory biota present in tidal/subtidal zone immediately adjacent to former dock area
- Depending on results of the screening level risk assessment, conduct surveys to determine primary harvest areas/preferred habitat for known species utilized (crab, clams, sea cucumbers, urchins, other invertebrates, groundfish) and their proximity to Kendrick Creek delta and former loading dock areas with identified contamination.

Kendrick Creek Delta

- Further delineate uranium and lead in sediments of the Creek and intertidal/subtidal outwash area.
- Evaluate existing surface water/sediment data using RESRAD Biota or other models.

Cabin Area

- Collect additional radon data.

APPENDIX B

- Perform additional gamma surveys around cabin area.

Roads

- Identify and sample locations where runoff from the road may impact streams and wetlands.
- Further evaluate extent of contamination in the areas around 300' Level where there was truck spillage, determine thickness/dimension of road and waste rock for volume estimates.

300' Level

- Inventory the number of collapsed drill cores, representative length/weight, stacked near the waste rock dump/trailer area for tonnage estimate purposes.
- Additional characterization of petroleum contamination associated with the generator building, including analysis of PCBs in soil.
- Sampling of soil downgradient of the waste rock dumps to determine potential for migration of contaminants.

700' Level

- Sampling of soil downgradient of the waste rock dumps to determine potential for migration of contaminants.
- Sample water flowing from the adit.
- Evaluate potential for contamination along the road from incidental ore deposition from the trucks, additional gamma surveys.

900' Level

- Collect soil samples to verify/determine potential lead-soil contamination in the vicinity of the lead-acid battery remnants.
- Evaluate extent of soil contamination downgradient from the waste rock dumps.
- Collect samples to evaluate contamination sources associated with the former camp buildings.
- Determine volume of surface water flowing into the open pit and into the 900' Level portal.
- Mine Fork Creek is separated from the open pit by an overgrown dike; evaluate its condition and likelihood of failure.

Adit Portals

- Determine radon concentration and air flow from or into the adit portals
- Evaluate engineering considerations, dimensions, etc.

Additional Requirements

- Summarize extent and type(s) of subsistence activities in the vicinity (e.g., harvest of fish, plants, seaweed, sea cucumbers, etc) through conducting surveys of rates of subsistence resources utilized in the area and types of ecological receptors present
- Evaluate current tribal, subsistence, ecological, recreational resources and survey use levels of the area.

APPENDIX B

- Determine current and potential future Site usage patterns that may cause unacceptable exposures to fugitive dust or radon in the air.
- Implement biota sampling, if necessary, to evaluate the possible biological effects of stream and marine sediment contamination.

C. SITE SAFETY AND HEALTH PLAN

A Site Safety and Health Plan (SSHP) that addresses work to be performed at the Ross Adams Mine Site shall be prepared and submitted for review and approval by the Forest Service. The SSHP shall ensure the protection of public health and safety during performance of all work. At a minimum, the plan shall ensure compliance with US EPA's Standard Operating Safety Guide (July 1988) and all applicable Occupational Safety and Health Administration (OSHA) regulations for Hazardous Waste Operations and Emergency Response (40 CFR 311 and 29 CFR 1910).

D. QUALITY ASSURANCE/QUALITY CONTROL PLAN

A Quality Assurance Project Plan (QAPP) for the Ross Adams Mine Site shall be prepared and submitted for review and approval by the Forest Service. The QAPP shall focus on ensuring the quality of all sampling and analysis data. The QAPP shall be prepared in accordance with the following guidance documents as appropriate: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures (OSWER Directive 9360.4-01), Environmental Response Team Standard Operating Procedures, and OSWER Directives 9360.4-02 through 9360.4-08, and State of Alaska regulations and guidance.

E. SITE CHARACTERIZATION RESULTS

Within ninety (90) days after receiving complete analytical results from the environmental studies conducted according to the approved SAP, a Site Characterization Report shall be prepared that documents the activities conducted and conclusions drawn during the expanded site investigation. The Report shall detail all field activities conducted in the course of determining the nature and extent of the contamination. Draft and final versions of the report shall be submitted for review and approval by the Forest Service. The report format shall include:

- An executive summary that provides a synopsis of results
- A detailed description of site activities in support of the investigation
- A photographic log that details site activities
- Figures/maps delineating all sampling locations and the size and shape of contaminated areas delineated during the investigation
- Figures/maps with media (soil/sediment/water, etc.) sample locations and results
- Tables with sample results
- A conclusion section that details results and interprets their meaning

APPENDIX B

- A recommendation section that outlines further sampling or response actions required
- All field notes and other supporting field documentation including survey data, field test kit raw data, etc. (as Appendices)
- Data evaluation, including Alaska Data Quality Checklists
- All sampling data must be surveyed, with geo-referenced coordinate locations provided in tabular format and presented on maps/figures

F. EE/CA REPORT

Within the timeframe set forth in the Project Schedule, an EE/CA shall be prepared that describes potential removal actions for the Ross Adams Site. The EE/CA Report shall be prepared in accordance with EPA's *Guidance on Conducting Non-Time Critical Removal Actions Under CERCLA*, EPA 540-R-93-057, OSWER Directive 9360.0-32 (August 1993). The report shall include textual sections which discuss in detail the topics outlined in the following paragraphs. The Report shall include a risk assessment, removal action objectives, and a recommended removal action alternative. Draft and final versions of the EE/CA Report shall be submitted for review and approval by the Forest Service.

- Executive Summary. The EE/CA Executive Summary shall provide a general overview of the contents of the EE/CA.
- Site Characterization. The Site Characterization shall include a description of the Site, a history of the Site, general background information, a description of previous site removal actions, a discussion of the source, nature and extent of contamination, and a presentation of all analytical data.
- Human Health and Ecological Risk Assessment. A human health and ecological risk assessment (RA) shall be conducted mirroring the technical intent of determining risk pursuant to the risk assessment framework for a remedial action investigation. The RA shall be conducted as appropriate using EPA and State of Alaska guidance, including *Risk Assessment Guidance for Superfund*, *Ecological Risk Assessment Guidance for Superfund: Process for Designing and Conducting Ecological Risk Assessments*, *Risk Assessment Guidance for Superfund*, and *EPA Region 10 Supplemental Ecological Risk Assessment Guidance of Superfund*; and *Alaska Department of Environmental Conservation (ADEC) Risk Assessment Procedures Manual*, and *ADEC Cumulative Risk Guidance*. Respondents are not required to comply with the procedural aspects of the above-referenced guidance documents. The required deliverables and the RA review and approval process, will be governed by this SOW. A RA approach provides a more robust risk assessment than a Streamlined Risk Evaluation typically performed in conjunction with an Engineering Evaluation Cost Analysis. The primary objectives of the RA are to evaluate existing and imminent risks to human health and the environment in the absence of a response to the releases at the Site, and to present information on the potential impacts from the removal action alternatives. Potential human receptors include current/future recreational users, current/future subsistence users (onsite and offsite), and

APPENDIX B

current/future commercial fishery users. The RA workplan is to be approved by the Forest Service. Any screening risk assessment methods and determinations shall be approved by the Forest Service before a focused risk assessment.

- iv. Identification of Removal Action Objectives. The Identification of Removal Action Objectives shall include a description of the scope of the Removal Action to be taken, a schedule for the Removal Action Work, and a description of the planned Removal Action response activities. The removal action objectives shall consider risks to human health and the environment that are identified in the RA.
- v. Identification and Analysis of Removal Action Alternatives. The Identification and Analysis of Removal Action Alternatives shall include a discussion of each of the Removal Action Alternatives considered, and a discussion of the effectiveness, implementability, and cost of each alternative respectively. Evaluation of effectiveness shall include discussion of: overall protection of human health and the environment; compliance with ARARs and other criteria, advisories, and guidance; long-term effectiveness and permanence; reduction of toxicity, mobility or volume through treatment; and short-term effectiveness. Evaluation of implementability shall include a discussion of: technical feasibility, administrative feasibility; the availability of services and materials; state acceptance; and community acceptance. Cost shall include: direct capital costs, indirect capital costs, any annual post removal site costs.
- vi. Comparative Analysis of Removal Action Alternatives. This section shall identify the advantages and disadvantages of each response action alternative relative to the other response action alternatives, so that any difference that would affect the remedy selection can be identified.
- vii. Recommended Removal Action Alternative. This section shall identify the action that best satisfies the evaluation criteria based upon the comparative analysis. A draft version of the Recommended Removal Action Alternative Section shall be prepared, but the USDA Forest Service will determine the recommended Removal Action alternative.
- viii. Community Relations. Community relations activities during removal actions are intended to promote active communication between communities affected by a release or a threat of release and the Forest Service. Community relations activities shall be performed in accordance with Sections 300.415(n) and 300.820 of the NCP. The Forest Service is responsible for community relations activities, with support deemed necessary from responsible parties and as coordinated or partnered with regulatory agencies.

The initial draft report shall be submitted to the Forest Service only and shall be revised as directed by the Forest Service. Once the Forest Service determines that the draft report is ready for public comment, Respondent will prepared a public draft EE/CA that will be made available to the public for review and comment. Upon conclusion of the public review period, the Forest

APPENDIX B

Service will compile all review comments received and specify any further changes needed to finalize the EE/CA and address the public comments.

G. MONTHLY PROGRESS REPORTS

A monthly progress report shall be submitted to the Forest Service by the 10th day of each month that describes all actions undertaken pursuant to this SOW. The report shall describe all significant developments during the preceding period, including actions completed and any problems encountered, analytical data received, work anticipated during the next reporting period, and planned resolution of any identified problems. Monthly conference calls with the Forest Service may also occur at the discretion of the Forest Service. The report shall contain the following information:

1. Actions taken to meet the Project Schedule, including plans and action taken in the preceding month.
2. Actions taken during the preceding month that deviated from those planned or described in previous months.
3. All significant problems encountered and any anticipated problems, any actual or anticipated delays, and all solutions planned or implemented to address problems or delays.
4. Work planned for the next month in the schedule for all work.

H. DOCUMENTS AND DELIVERABLES FORMAT

Monthly reports may be submitted by electronic mail. All other documents and deliverables submitted under the SOW shall be provided in both hard copy and electronic versions. Electronic versions shall include one complete, text searchable, Adobe PDF document. Major sections, as applicable, shall be bookmarked.

Table 1. Summary of Proposed Sampling Locations Kendrick Bay/Ross Adams

Kendrick Bay/Ross Adams

December 19, 2008

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